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Committee on Resources

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Testimony of Carlos G. Dalmau regarding the Report by President's Task Force on Puerto Rico's Status

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Mr. Chairman and Members of the Committee. My name is Carlos G. Dalmau. I am Executive Director of the Popular Democratic Party Committee on Status. As you know, Governor Acevedo-Vilá could not attend this hearing today, because he is leading the effort to solve an imminent fiscal crisis that might result in a government shutdown.

The situation is similar to the 1995 Federal Government shutdown which I am sure you remember well. But for Puerto Rico this is a first and the impact, I dare say, is proportionately more devastating for our economy and for the lives of thousands of public workers.

Even during these difficult times, I welcome the opportunity to present my views on behalf of the Popular Democratic Party. I worked in Congress for 3 years and I am truly glad to be back. I appreciate the interest that this Committee has shown in dealing with such an important issue for all Puerto Ricans.

I sincerely hope that this hearing is only the beginning of a broad and inclusive process, not limited to the political parties. The status of Puerto Rico is such a fundamental issue for us that I urge you to be as inclusive as possible. And more importantly, I hope that these efforts result in a true Self-Determination process. I am sure that the Governor will be very active during this process.

The topic of this hearing is the Report issued by the President's Task Force on December 22, 2005. First, let me focus on some of the legal conclusions of the report that are most questionable.

Volumes have been written on the legal and constitutional aspects of the status of Puerto Rico. The scholarly debate is rich, complex and extensive. However, the Report under the title of Legal Analysis, dedicates only 4 and a half pages to analyze the whole legal conundrum of Puerto Rico's status. If this was a college paper, it would get a grade of D—and that from a lenient professor.

It seems that the drafters of the Report were so eager to get to the conclusions that they forgot to support them and to discuss the applicable law altogether.

I am submitting along with my testimony a thorough memorandum by Charles Cooper, a former head of the Office of Legal Counsel at the Department of Justice, and also a bibliography of related scholarship so they can be made part of the record. The Cooper memorandum had been submitted to the members of the Task Force several months before the report was issued. In light of the weight of authorities cited in this memo, it is perplexing that the Task Force Report does not even attempt to mount a legal defense of its conclusions. Some of these conclusions pretend to be supported by a 14 page Department of Justice memorandum on Guam, which as you will see is completely discredited by the thorough legal analysis in the Cooper memorandum.

Beyond the lack of depth and real analysis, there are 4 conclusions that are particularly disturbing.

First, that Congress can directly legislate and change the island's governmental structure unilaterally. The logical consequence of this report is that this Congress can abolish the Puerto Rico legislature, fire the Governor and appoint an Emperor. That is the only logical consequence of this formalistic--all or nothing--view of the territorial clause of the Constitution that the report puts forth.

Second, the Federal Government may relinquish US sovereignty by ceding Puerto Rico to another nation. Maybe you can trade us to the Chinese for some currency value concessions. It is embarrassing that in this day and age, Federal officials will put such a conclusion on paper. It really calls into question the seriousness of this entire exercise.

Third, that US citizens born in Puerto Rico may be deprived of their citizenship at any time because of the statutory nature of it. I would like to see how the U.S. Courts will rule on an attempt to deprive Puerto Ricans in Florida and New York of their US citizenship.

The analysis or lack thereof of the issue of citizenship is painful. The drafters of the Report adopt without discussion the legal position advocated by some that Congress can revoke the US Citizenship of the people of Puerto Rico because we are allegedly merely statutory citizens. They do this ignoring case law and legal scholarship that sustain the contrary position.

This report, at a time in which we are discussing immigration in America and the rights of foreign workers in this country is outrageous. This report issued in times of war when our brothers and sisters are sent into harms way in Iraq is a shame.

Fourth, that the Constitution somehow prohibits the U.S. Government from entering into a relationship with Puerto Rico based on mutual consent. The Cooper memorandum explains in great detail just how ludicrous and legally wrong is the mantra repeated in the Report that the Congress may not bind itself to a relationship based on mutual consent. This conclusion ignores over 200 years of precedent. It is our position that the United States Constitution permits the United States and the people of a territory to enter into a bilateral and binding political relationship. The authors of the Report attempt to unjustifiably limit the options available to the people of Puerto Rico in order to create an artificial majority for statehood.

All of these conclusions, if adopted by the United States, would have tremendous political and legal repercussions.

The Report also casts grave doubt as to the value of the commitments made by the United States to the world. As former U.N. Ambassador Jeane Kirkpatrick stated in a recent New York Times OpEd "quite unbelievably, the Task Force raised questions about Puerto Rico's status that reminded us of what we heard from the Cuban delegation and its communist allies" 25 years ago.

This Report does not provide the basis for any legitimate process of self-determination. Four months after the publication of the Report, President Bush has not said a word about it. The President is silent and with good reasons.

I respect the fact that many Puerto Ricans have legitimate reasons to favor full independence or statehood. I am willing to debate in any public forum why I think the Autonomous alternative of the Commonwealth is the best choice today for Puerto Rico. I am willing to let the people decide their future status through a truly democratic process. But no Puerto Rican should be forced to accept the premises and conclusions of this report no matter what political advantage they may think they can get out of it. No American citizen should accept the implications of this report. Pro-statehood citizens should not favor statehood because they are threatened or scared by a purposefully biased Report. Puerto Ricans should not be scared into voting for statehood because otherwise they may be ceded to Pakistan.

What is the next step? There are two status bills in Congress today, pending your consideration. One of them embraces the Task Force Report and its recommendations. The other one, the "Puerto Rico Self-Determination Bill" co-sponsored by Congressman Duncan and Congresswoman Velázquez, provides for a true self-determination process through a Puerto Rican Constitutional Convention .

The problem with the report and the Fortuño bill is that they lay out a twisted process for a referendum that would unfairly stack the deck in favor of statehood.

What this report does is an outrageous mathematical exercise. In order to ignore the Commonwealth option, the proposed two-stage process adds all the possible votes against Commonwealth, to knock that option out in the first round.

In every plebiscite held in Puerto Rico, Commonwealth has won. Statehood has never won.

The report tries to change that by creating an artificial majority. The math is simple. If you add the second place –statehood– to the third place –independence– then you can fabricate an artificial majority against the real majority, the Commonwealth.

It is very simple, although perverse and antidemocratic. Puerto Ricans deserve better. It is time for a new and better approach. An approach that is fair to everyone. Supporters of autonomy, statehood or independence, all Puerto Ricans deserve a fair, inclusive and democratic process with all of the three options represented.

With this in mind, the Governor and the Popular Democratic Party support the bipartisan bill sponsored by Congressman Duncan and Congresswoman Velázquez, H.R. 4963 “The Puerto Rico Self-Determination Act of 2006”—as well as its Senate companion, S. 2304 introduced by Senators Kennedy, Lott, Burr and Menéndez.

The Duncan-Velázquez bill is the right approach. The bill offers Congressional recognition of the right of Puerto Ricans to hold a constitutional convention as the democratic mechanism to solve this issue. And it commits the Congress to respond to the proposals of this convention. This new approach learns from the mistakes of the past and follows the example set by America’s founding fathers allowing us to fully exercise our democratic rights in an open and inclusive process.

The time to resolve Puerto Rico’s status is now. I urge you affirm Puerto Rico’s dignity and political rights. I invite you to reject a legislation that derives from the Task Force Report. I invite you to endorse the legislation that would establish the constitutional convention as the new and most democratic approach to solve this issue.

Everyone else testifying before this Committee today has been here, on this same issue, many times before. They are part of a generation that has spent its entire life on this issue. I acknowledge their historic contributions to this process, but as a member of a new generation I do not want to be here in 30 years dealing with the same issue. We have taken a hard look at the lessons from those prior experiences. One reason why the constitutional convention holds a particular appeal to people of my generation is that it is the only approach where Puerto Ricans are responsible for our own future. Work with us, not against us.

Conclusion

Congress has yet another chance to make it right. Puerto Ricans deserve more than this Report and the bill introduced by Commissioner Fortuño. Mr. Chairman and distinguished Members I urge you to go beyond this report. I urge you to support the Duncan-Velázquez Self-Determination bill. Let us really provide a process of self-determination in Puerto Rico that is fair and inclusive.

The issue is status and it needs to be addressed. In this process Puerto Ricans are entitled to be told the whole truth. But as you know the truth is a fragile thing in politics. And in this Task Force Report the truth has been twisted to make a trap for fools. Puerto Ricans will not be deceived again. We deserve much more.

The Popular Democratic Party is ready. We are ready to write a new chapter based on dignity, democracy and mutual respect. Puerto Ricans are ready, we are not afraid. It is about time that we conclude what was started in 1952. Congress has a choice to make. Let us move forward towards a new beginning in US-Puerto Rico relations.